IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1133 OF 2005

Smt.Sumati Ganpat Kambale & Anr. .. Petitioners.
Vs.
Shri Sanjay Balaji Kadam & Ors. .. Respondents.

Mr.S.B.Shetye for the petitioners.
Mr.A.S.Kapse for respondent nos.1 to 9.

CORAM : D.B.BHOSALE, J.

DATED : 19TH JANUARY, 2007

P.C.:

. Heard learned counsel for the parties.

2. This petition is directed against the concurrent findings recorded by the courts below holding that the petitioners-defendants have acquired suitable alternate accomodation and decreeing the suit on that ground only. I perused the judgments of both the courts below. It is clear from the findings recorded by the courts below that the defendants have acquired an alternate accomodation. However, according to the defendants it is not suitable since it is away from the city. From perusal of the findings it is clear that the alternate accomodation situate at Kuvarbao which is suburb of Ratnagiri and there is frequent city bus service available for the

residents. Mr.Shetye, learned counsel for the petitioners submits that defendant no.1 being an old lady, she requires medical assistance which is available in the city of Ratnagiri only and, therefore, the suit cannot be decreed on the ground of alternate accomodation. This contention of the defendants cannot be accepted for various reasons. Firstly, it cannot be said that the alternate accomodation acquired by the defendants is very far from the city. Secondly, no evidence is brought on record to show that no medical facilities are available at the place where the alternate accomodation situate. The defendants have not stepped into witness box and led any evidence in support of their contention. Against this backdrop the court below has rejected the contentions of the defendants and has decreed the suit on the ground of acquiring the suitable alternate accomodation. Considering that there are concurrent findings recorded by the courts below and as I find that there is sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this court under Article 227 of the Constitution to disturb the findings of fact, this writ petition deserves to be dismissed and is dismissed as such. Mr.Shetye, learned counsel for the petitioner at this stage prayed for sufficient time to vacate the suit

premises. Mr.Kapse, learned counsel for respondent nos.1 to 9 did not oppose the prayer and left it to the court. Considering the overall facts and circumstances of the case the petitioners are allowed to vacate the suit premises on or before 31st December, 2007 subject to their filing an usual undertaking in this court within a period of six weeks from today. The writ petition is disposed of.

(D.B.Bhosale, J.)